IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

Crl.MC.No. 286 of 2007()

ORDER IN C.M.P. 4232/2006 IN ST.1921/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY

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PETITIONER/ACCUSED:

K. ABDUL KHADER HAJI, S/O. ABU HAJI
KIZHAKKEDATH VEEDU
PERINGATHUR AMSOM, THALASSERY
KANNUR DIST.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS/COMPLAINANT:

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1. K.K. ABDULLA, S/O. MUHAMMED HAJI
   KARANTHURKANDI VEEDU
   KODUVALLY AMSOM, KOZHIKODE DIST.

2. STATE OF KERALA, REP. BY THE PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 286 of 2007

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Dated this the 6th day of February, 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the N.I. Act. The complainant's evidence was closed. Thereafter the evidence was re-opened and an agreement was marked as Ext.P8. The complainant was recalled for marking Ext.P8. The accused took up a contention that there was contumacious delay in the production of Ext.P8 and suggested that it is not a genuine document. Thereafter the accused wanted three documents to be received in evidence. They are the F.I. statement lodged by the complainant in another crime, the F.I.R. registered by the police on the basis of that F.I. statement as also the seizure mahazar, under which Ext.P8 marked in this case was seized by the police. That application was described to be one under Section 311 Cr.P.C. But virtually the prayer was to receive the documents without formal proof under Section 294 Cr.P.C. The learned Magistrate, by the impugned order, a copy of which is produced as Annex.A3

(dt.6.12.2006 in C.M.P. 4232/2006), rejected the application. Aggrieved by the said order, the petitioner has come before this Court.

2. After hearing the learned counsel for the petitioner, I am satisfied that it is not necessary to wait for issue and return of notice to the respondent/complainant for the disposal of this petition.

3. According to the learned counsel for the petitioner, the complainant cannot possibly have any objection against marking those three documents. The learned Magistrate had not at all applied his mind under Section 294 Cr.P.C. According to the counsel for the petitioner, the complainant has been permitted to reopen his evidence and there is no justification in denying the prayer of the petitioner for such opportunity to adduce further evidence. He further submits that the additional documents which the accused wants the court to receive will not retard the progress of the trial in any manner as all that is required is receiving the three documents in evidence without formal proof under Section 294 Cr.P.C.

4. I am in agreement with the learned counsel for the petitioner that the court below has not applied its mind properly to the facts in the light of Section 294 Cr.P.C. I am, in these circumstances, satisfied that the

impugned order deserves to be set aside and the learned Magistrate must be directed to dispose of Annex.A2 again.

5. This Crl.M.C. is accordingly allowed. The impugned order is set aside and the learned Magistrate is directed to dispose of Annex.A2 again, if S.T.No.1921 of 2005 has not been disposed of before this order is placed before the learned Magistrate.

(R. BASANT)
Judge

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